

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-10991-NG

KENNETH M. WHITE and)
MANDY DIAS)
)
Plaintiff)
)
vs.)
)
ERIC MADONNA and CITY OF)
FALL RIVER,)
)
Defendants)

PLAINTIFFS' MOTION FOR SANCTIONS

Pursuant to Fed.R.Civ.Pr. 37(b)(2), Plaintiffs Kenneth M. White and Mandy Dias hereby move for sanctions against Defendants Eric Madonna and City of Fall River for failure to obey the Court's order of April 29, 2005 concerning discovery.

In support of this motion, Plaintiffs refer to the attached Affidavit of James Hodgson and Certificate of Compliance with Local Rule 37.1.

Plaintiffs also state as follows:

1. On April 29, 2005, this Court allowed Plaintiffs' Motions To Compel Answers to Interrogatories and Production of Documents, originally served upon both Defendants on September 27, 2004. A copy of the Order is attached.
2. The Court ordered both Defendants to respond to Plaintiffs' interrogatories and document requests within ten days of receipt of its Order.
3. When Defendants failed to comply with the Court's Order within ten days of receipt, Plaintiffs' attorneys allowed Defendants one additional week to comply.

4. On May 18, 2005, counsel for Plaintiff Kenneth White telephoned Defendants' attorneys Thomas McGuire and Gary P. Howayeck in a good faith effort to remind them of the Court's Order. Attorneys McGuire and Howayeck were absent from their offices or were otherwise engaged on that day and time. A request for a return call was ignored.

5. On May 19, 2005, counsel for Plaintiff Kenneth White again telephoned Defendants' attorneys Thomas McGuire and Gary P. Howayeck in a good faith effort to remind them of the Court's Order and to resolve the underlying issue concerning discovery. Once again, Attorneys McGuire and Howayeck were absent from their offices or were otherwise engaged on that day and time.

6. Consequently, Plaintiff White's counsel dictated a detailed message to opposing counsels' legal secretary to the effect that Plaintiffs intended to file a Motion for Sanctions if Defendants failed to comply with the Court's Order within three days, that is, by May 23, 2005.

7. To this date, Defendants' attorneys have not returned Plaintiffs' telephone calls and have not complied with the Court's Order.

8. Since the Court issued a revised Scheduling Order on February 28, 2005, Defendants' have consistently and continuously ignored Plaintiffs' numerous good faith efforts to gain answers and responses to written discovery.

9. Further, Defendants have willfully disobeyed this Court's Order to answer Plaintiffs' interrogatories and to respond to Plaintiffs' document requests.

WHEREFORE, Plaintiffs Kenneth M. White and Mandy Dias request the following relief:

1. An order entering judgment by default against both Defendants;
2. An order scheduling a trial on the assessment of damages;
3. An order that facts designated by Plaintiffs in their Complaint shall be taken as true;
4. An order awarding Plaintiffs their reasonable attorneys' fees of \$1,000 for work in seeking Defendants' compliance with discovery;
5. Such other relief as the Court deems fair and just with respect to Fed.R.Civ.Pr. 37(b)(2).

Respectfully Submitted,
Plaintiff Kenneth White,
By His Attorneys,

/s/ James Hodgson
PHILIP N. BEAUREGARD BBO# 034780
JAMES HODGSON BBO# 656231
BEAUREGARD, BURKE & FRANCO
32 William Street
New Bedford, MA 02741
(508) 993-0333

Plaintiff Mandy Dias,
By Her Attorney,

/s/ Brian Corey, Jr.
BRIAN COREY, JR. BBO#
1041 Main Road
Westport, MA 02790
Tel. No.: (508) 636-8861

Date: June 6, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 2004-10991-NG

KENNETH M. WHITE
and MANDY DIAS,
Plaintiffs

V.

ERIC MADONNA
and CITY OF FALL RIVER,
Defendants

ORDER ON

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES
(Docket # 16),**

**MOTION TO COMPEL ANSWERS TO INTERROGATORIES
(Docket # 17),**

**MOTION TO COMPEL PRODUCTION OF DOCUMENTS
(Docket # 18),**

and

**MOTION TO COMPEL PRODUCTION OF DOCUMENTS
(Docket # 19)**

ALEXANDER, M.J.

The plaintiffs in this case, Kenneth M. White and Mandy Dias, have filed motions to compel answers to interrogatories and the production of documents

from defendants Eric Madonna and the City of Fall River.¹ According to the plaintiffs' motions, the interrogatories and requests for documents were served on the defendants on September 27, 2004. Neither Mr. Madonna nor the City of Fall River has, to date, responded to the requests. Furthermore, neither Mr. Madonna nor the City of Fall River has responded to the current motions to compel, which were filed on March 25, 2005.²

Following a status conference before this Court on February 28, 2005, the Court allowed the plaintiffs' motion to modify and re-establish the scheduling order ("the scheduling motion") following the parties' unsuccessful mediation. The Court's electronic Order regarding the scheduling motion states, *inter alia*, that "[t]his Court does take note . . . that the defendant, Eric Madonna, is in military service in Iraq. Discovery shall continue, particularly with respect to the City of Fall River. If an issue develops respecting Mr. Madonna, the parties shall inform the Court." Defense counsel has not informed the Court of any such issue

¹The plaintiffs filed four separate motions: a motion to compel interrogatory answers from Mr. Madonna (docket # 16); a motion to compel interrogatory answers from the City of Fall River (docket # 17); a motion to compel the production of documents from Mr. Madonna (docket # 19); and a motion to compel the production of documents from the City of Fall River (docket # 18).

²Although the plaintiffs' motions to compel were filed on March 25, 2005, the accompanying Local Rule 37.1 certificate was not received by the Court until April 26, 2005, due to an inadvertent error in the original filing.

as to Mr. Madonna or, for that matter, of any reason why the City of Fall River has not responded to the written discovery requests. The Court therefore ALLOWS the plaintiffs' motions to compel and ORDERS the defendants to answer the plaintiffs' interrogatories and respond to the plaintiffs' document requests, or to demonstrate to this Court why they are unable to do so, within ten days of receipt of this Order.

SO ORDERED.

4/29/05

Date

/S/ Joyce London Alexander

United States Magistrate Judge